IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8417 OF 2004

Kanchanbai Kantilal Singvi & Anr. ...Petitioners
Vs.
Hausabai Charugatt Upadhyay & Anr. ...Respondents

Mr. P.M.Arjunwadkar and Mr.G.S.Godbole for the Petitioners
Mr. P.N.Joshi for the Respondents No.1 and 2.

CORAM: A.S.OKA, J.
DATED: JANUARY 19,2006.

P.C.:

1. Heard Advocates for the parties. By order dated 9th December 2004 this Court issued notice for final disposal. By this Petition under Article 227 of Constitution of India the Petitioners who are original plaintiffs have taken exception to the Judgment and Order dated 17th August 2004 passed by the learned Civil Judge (J.D.) at Igatpuri by which an application for amendment of the plaint made by the Petitioners at Exh.43 has been rejected. The Petitioners have also challenged the order passed on the same date by which Application at Exh.41 made by the Respondents-Defendants for amendment of the written statement has been allowed.

2. The learned Advocate for the Petitioners submitted that the proposed Amendment to the plaint did not change the nature of the suit and the same deserved to be allowed. The learned Advocate for the Respondents opposed the Petition by submitting that the proposed amendment is frivolous in nature.

3. I have considered the submissions. By the proposed amendment the Petitioners want to plead that an Advocate had prepared a draft Agreement which was corrected by the parties. By the proposed amendment, the Petitioners desire to rely upon the alleged corrected draft prepared by the Advocate. The Application for amendment has been rejected on the ground that prohibition under Section 126 of Indian Evidence Act, 1872 will apply. On plain reading of the said section the same cannot have any application. In my view the amendment ought to have been allowed. As regards challenge to the order passed on application at Exh.41 is concerned, there is no merit. By the said order the Respondents have been permitted to carry out the amendment to the written statement. There is no error in the said order.

4. Hence I pass the following order :

i) Impugned order dated 17th August 2004 passed by the Trial Court below Application at Exh.43 is quashed and set aside. The Application made by the Petitioners at Exh.43 is allowed. The Petitioners will carry out the amendment within a period of two weeks from the date on which authenticated copy of this order is produced in the trial Court.

ii) The order impugned passed on Application at Exh.41 is confirmed.

iii) It is obvious that the Respondents will be entitled to file the additional written statement to the amended plaint.

iv)All contentions of the parties on merits of the suit are expressly kept open.

v) Rule is made partly absolute accordingly.No order as to costs.

vi) Parties and the Trial Court to act upon an authenticated copy of this order.

Judge.